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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-1369

RUSSELL G. OSWALD, Commissioner of Correctional Services; PAUL J. REGAN, Chairman of the Board of Parole; J. EDWIN LA VALLEE, Superintendent of Clinton Correctional Facility; JOHN T. DEEGAN, Superintendent of Auburn Correctional Facility; NEW YORK STATE BOARD OF PAROLE; and the NEW YORK STATE DEPARTMENT OF CORRECTIONAL SERVICES, *Petitioners,*

VS.

EUGENE RODRIGUEZ, MICHAEL KATZOFF and JOHN KRITSKY, *Respondents.*

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF OF THE PEOPLE OF THE STATE OF CALIFORNIA AMICUS CURIAE IN SUPPORT OF PETITIONERS

INTERESTS OF AMICUS CURIAE

The question presented in this case as stated by the State of New York in its petition for certiorari is as follows:

> "Should state prisoners have the option of challenging the conditions of their confinement by means of the Civil Rights Act when there exists an appropriate remedy by way of habeas corpus?"

Although we do not view the issue this broadly, we are vitally interested in this case since we believe its outcome will significantly influence the volume and character of federal litigation by our state prisoners seeking release from custody under their state criminal judgments. We are hopeful of a result which will both avoid superfluous litigation and permit the resolution, insofar as possible, of questions relating to the custody of our state prisoners in our state courts. We are persuaded that both of these interests will be served by a decision by this Court requiring such prisoner litigation to be pursued in federal habeas proceedings.

SUMMARY OF ARGUMENT

The decision below is erroneous since it permits a state prisoner to use an action under the Civil Rights Act to determine the validity of his custody under a state criminal judgment and to secure his release from confinement. The correct and exclusive federal forum for such an action is a federal habeas proceeding. A federal court in a civil rights action has no power to order the release of a prisoner confined under a state criminal judgment. This conclusion is implicit in the various rationales which are relied upon in numerous decisions rejecting efforts by state prisoners to secure damages or injunctive relief in civil rights actions on the ground their custody is unlawful. Moreover,

this conclusion is consistent with the traditional considerations of comity which govern federal intervention into the state criminal processes. If accepted by this Court, it will significantly reduce the burden upon the federal courts by resolving issues relating to the custody of state prisoners, at least initially, in the state courts.

ARGUMENT

A FEDERAL COURT IN A CIVIL RIGHTS ACTION HAS NO POWER TO ORDER THE RELEASE OF A STATE PRISONER CONFINED UNDER A STATE CRIMINAL JUDGMENT.

The salient issue before this Court is whether a state prisoner may use an action under the Civil Rights Act, Title 42, United States Code section 1983, as a means of securing his release from custody under a state criminal judgment. The prisoner litigants each challenged administrative determinations disallowing them a certain number of good conduct time credits against their sentences. In their district court litigation all three received favorable decisions on the merits resulting in restoration of the disputed credits and their release from confinement. These district court judgments and the in banc decision of the Circuit Court of Appeals which affirms them are erroneous since a federal court has no power to grant such relief in an action under the Civil Rights Act.

The power of a federal court to order the release of a state prisoner confined pursuant to a state criminal judgment is dependent upon an express Congressional grant of power. *Fay v. Noia*, 372 U.S. 391, 409, 415 (1963); *Darr v. Burford*, 339 U.S. 200, 204 (1950)

overruled in other respects in Fay v. Noia, supra, 435-36; *Ex parte Dorr,* 44 U.S. (3 How.) 103 (1845). This power clearly exists in an action under the federal Habeas Corpus Statutes, Title 28, United States Code sections 2241-2254. But, in the habeas statutes, the traditional considerations of comity which inhibit federal intervention into the criminal processes of the states are expressed not only in a codification of the exhaustion requirement, but in a direction to afford to a state court factual finding a presumption of correctness when certain conditions are met. 28 U.S.C. §2254; see *Picard v. Conner,* 404 U.S. 270 (1971).

Since these prisoner litigants sought release from state custody which they alleged violated the federal Constitution, they could have sought relief in a federal habeas proceeding. 28 U.S.C. §2241(c)(3). Their cases are essentially similar to those brought by state prisoners who challenge state administrative actions revoking their paroles. There can be no question that a habeas proceeding is the correct federal forum for a state prisoner who would contest his parole revocation. See *Morrissey v. Brewer,* 406 U.S. ....., 92 S.Ct. 2593 (1972).

The position we now urge is that a state prisoner, who may litigate in a federal habeas proceeding an issue relating to the validity of his custody under a state criminal judgment, is foreclosed from litigating the same issue in a federal civil rights action. This is the conclusion which we find implicit in the decisions of a number of courts which have refused to consider such issues in actions under the Civil Rights Act. The

various rationales given by these courts for refusing to permit such litigation all point to a more basic reason which is simply that a federal court in a civil rights action has no power to determine the validity of a state criminal judgment or to order the prisoner's release from confinement under it.

One rationale which has been used to foreclose federal inquiry in a civil rights action into the validity of a state criminal judgment is the doctrine of res judicata. In *Goss v. State of Illinois*, 312 F.2d 257 (7th Cir. 1963), the court held that the Civil Rights Act did not confer jurisdiction upon a federal district court to review a state criminal contempt conviction which had been affirmed by the Illinois Supreme Court. While the doctrine of res judicata will not foreclose federal inquiry in a habeas proceeding, the doctrine is applicable to an action brought under the Civil Rights Act. See, *e.g.*, *Kaufman v. Moss*, 420 F. 2d 1270, 1273-74 (3d Cir.), *cert. denied*, 400 U.S. 846 (1970); *Metros v. United States District Court for Dist. of Colo.*, 441 F.2d 313, 315-17 (10th Cir. 1970); *Gaito v. Strauss*, 249 F.Supp. 923, 933-34 (W.D.Pa. 1966), *aff'd on other grounds*, 368 F.2d 787 (3d Cir. 1966), *cert. denied*, 386 U.S. 977 (1967).

Perhaps the rationale most frequently cited in decisions rejecting efforts by state prisoners to secure their release from custody in actions under the Civil Rights Act is that doing so would permit circumvention of the federal habeas exhaustion requirement. This rationale has been utilized when the effort is one to attack the validity of a state criminal conviction.

See, *e.g.*, *Gaito v. Ellenbogen*, 425 F.2d 845, 848 (3d Cir. 1970); *Johnson v. Walker*, 317 F.2d 418, 419-20 (5th Cir. 1963); *Denney v. State of Kansas*, 436 F.2d 587, 588 (10th Cir. 1971). It has also been used when the effort is one to challenge a parole revocation. See, *e.g.*, *Still v. Nichols*, 412 F.2d 778, 779 (1st Cir. 1969); *Smartt v. Avery*, 411 F.2d 408, 409 (6th Cir. 1969); *Peinado v. Adult Authority of Dept. of Corr.*, 405 F.2d 1185, 1186 (9th Cir.), *cert. denied*, 395 U.S. 968 (1969). This concept most frequently appears in cases where the prisoner seeks equitable relief but it has also been used to foreclose an action for damages. See, *e.g.*, *Gaito v. Ellenbogen*, *supra*, 848-49; *Still v. Nichols*, *supra*, 779; *Smith v. Logan*, 311 F.Supp. 896, 899 (W.D.Va. 1970); *Howard v. Rolufs*, 338 F.Supp. 697 (E.D.Mo. 1972).

Prematurity is another rationale which has been used to preclude a state prisoner from using a federal civil rights action to contest the validity of his custody under a state criminal judgment. This is expressed in some cases as a refusal to permit the prisoner to proceed with his suit until he has secured a determination in a conventional post-conviction proceeding that his custody is unlawful. See, *e.g.*, *Still v. Nichols*, *supra*, 779; *Smith v. Logan*, *supra*, 899. As one court pointed out, it would be improvident for a federal court to entertain a suit for damages for confinement under a state criminal conviction while the plaintiff is still in prison on that conviction. *Smith v. Logan*, *supra*, 899; see also *Moore v. Frazier*, 316 F.Supp. 318, 320-21 (D.Neb. 1970).

Insofar as a civil rights plaintiff seeks equitable relief against the enforcement of a criminal judgment, he encounters the basic doctrine that a court of equity should not act when the moving party has an adequate remedy at law. *Cf. Younger v. Harris,* 401 U.S. 37, 43-44 (1971). This doctrine is particularly persuasive in this context since the remedy which is available in federal habeas is one which can resolve the issues more expeditiously than an action under the Civil Rights Act. Not only are the procedural formalities less complex, but it permits the litigants to be protected from the potential for harassment which exists in the discovery techniques available in a civil rights action. See *Harris v. Nelson,* 394 U.S. 286 (1969).

When a civil rights plaintiff seeks damages for an allegedly unconstitutional conviction or sentence, he is frequently foreclosed by an immunity defense. This defense has been successfully asserted by judges, *Pierson v. Ray,* 386 U.S. 547 (1967); by prosecutors, *Ney v. State of California,* 439 F.2d 1285, 1287 (9th Cir. 1971); and by probation officers, *Burkes v. Callion,* 433 F.2d 318 (9th Cir. 1970), *cert. denied,* 403 U.S. 908 (1971). The defense of immunity has also been held to shield members of a parole board from a suit for damages under the Civil Rights Act for revoking a parole. See, *e.g., Silver v. Dickson,* 403 F.2d 642 (9th Cir. 1968), *cert. denied,* 394 U.S. 990 (1969); *Gilmore v. Gordon,* 422 F.2d 860 (9th Cir.), *cert. denied,* 400 U.S. 837, *rehearing denied,* 400 U.S. 954 (1970).

Thus, a state prisoner who seeks injunctive relief or damages in an action under the Civil Rights Act predicated on a claim that his state criminal judgment is invalid will be foreclosed for any one of the following reasons. First, that the validity of his state criminal conviction was determined during his state trial and that determination is res judicata in his civil rights action. Second, that he cannot use an action under the Civil Rights Act to circumvent the federal habeas requirement that he exhaust his available state remedies. Third, that his civil rights action is premature until he has successfully attacked his state criminal judgment in a conventional post-conviction proceeding. Fourth, that insofar as he seeks equitable relief, he has an available remedy at law in habeas corpus. And, fifth, that insofar as he seeks damages, the defendants are protected from his suit by an immunity defense. Each of these reasons points to the inevitable conclusion that a federal court in a civil rights action has no power to determine the validity of a state criminal judgment or to order the release of a prisoner confined under it.

The same conclusion must be reached when a state prisoner in an action under the Civil Rights Act seeks injunctive relief or damages predicated on a claim that an administrative decision revoking his parole or disallowing his good conduct time credits renders his confinement federally impermissible. The issue central to his cause of action—the validity of his custody—is available to him in a federal habeas proceeding. Thus, he should not be permitted to use

an action under the Civil Rights Act to circumvent the federal habeas requirement that he exhaust his available state remedies. Similarly, his action is premature until he has successfully attacked his state custody in a conventional post-conviction proceeding. Also, insofar as he seeks equitable relief, he has an available remedy in federal habeas corpus. Moreover, the immunity considerations which would shield a judge or a probation officer from a suit for damages under the Civil Rights Act are similarly persuasive when asserted by administrative officials such as parole board members who act in a quasi-judicial capacity. Only the doctrine of res judicata presents a significant variation since the defendants can rely on this defense only if the issue has first been litigated to judgment. Thus, if an action under the Civil Rights Act is held to be an appropriate forum for litigation such as this, a state prisoner could not only circumvent litigating his issues in a state court but would be encouraged to do so.

We submit therefore that the decision below is erroneous. The appropriate forum for resolving the issues raised by the state prisoner litigants is a federal habeas proceeding. We urge this Court to so hold and, in doing so, to state definitively that when a state prisoner has an available forum in a federal habeas proceeding for litigating an issue relating to his custody under a state criminal judgment, he is foreclosed from litigating the same issue in a civil rights action. We are persuaded that this is a result which both recognizes the limitations on the power

of a federal court in a civil rights action and conforms to the comity considerations which pervade the entire area of federal intervention into the criminal processes of the states. Moreover, it will significantly reduce the burden on the federal courts by permitting questions concerning the custody of state prisoners to be resolved, at least initially, in the state courts.

CONCLUSION

For the foregoing reasons, we respectfully urge that the judgment of the United States Court of Appeals for the Second Circuit affirming the district court judgments in these three cases should be reversed.

Dated, San Francisco, California,
August 30, 1972.

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